In The Supreme Court of The United States

October Term, 19[illegible]

74-356

BROOKLYN HEIGHTS PRESBYTERIAN CHURCH, an unincorporated ecclesiastical association, and BROOKLYN HEIGHTS PRESBYTERIAN CHURCH OF SAN DIEGO, INC., a California Corporation,

Petitioners,

vs.

THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, an unincorporated ecclesiastical association, and the UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, INC., a Pennsylvania Corp., the TRUSTEES AND DIRECTORS OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, INC., THE PRESBYTERY OF SAN DIEGO CALIFORNIA, an unincorporated ecclesiastical association, and PRESBYTERY OF SAN DIEGO, CALIFORNIA, INC., a California Corp. WILLIAM MacINNES, STATED CLERK OF THE DEFENDANT SAN DIEGO PRESBYTERY, WILLIAM P. THOMPSON, STATED CLERK OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, an unincorporated ecclesiastical association,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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IN THE SUPREME COURT OF THE UNITED STATES

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Petitioners,

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THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, an unincorporated ecclesiastical association, and the UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, INC., a Pennsylvania Corp., the TRUSTEES AND DIRECTORS OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, INC., THE PRESBYTERY OF SAN DIEGO, CALIFORNIA, an unincorporated ecclesiastical association, and PRESBYTERY OF SAN DIEGO, CALIFORNIA, INC., a California Corp. WILLIAM MacINNES, STATED CLERK OF THE DEFENDANT SAN DIEGO PRESBYTERY, WILLIAM P. THOMPSON, STATED CLERK OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, an unincorporated ecclesiastical association,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Certiorari is respectfully sought to review a final judgment of the Supreme Court of the State of California, which denied a Petition of the petitioners for a hearing after a decision by the Court of Appeal, Fourth Appellate District, Division One, State of California and numbered therein 4th Civil No. 12726, County of San Diego.

The Judgment, Opinion and Decision of the California courts violate the petitioners' rights under the First Amendment of the Constitution of the United States and controlling decisions of the Supreme Court of the United States.

JUDGMENT, OPINIONS AND DECISIONS BELOW

The Judgment of the trial court in San Diego by the Honorable Verne O. Warner, Judge of the Superior Court of San Diego County, California is reprinted in Appendix A.

The Opinion of the District Court of Appeal of the State of California which was certified for nonpublication and is therefore without a citation, is reprinted in Appendix B.

STATEMENT OF JURISDICTIONAL GROUNDS

The date of the Judgment sought to be reviewed is August 27, 1974. A copy of the Judgment is reprinted in Appendix C. The District Court of Appeals on June 5, 1974, filed a Modification of its Opinion; a copy of which is reprinted in Appendix D.

On June 20, 1974, petitioners petitioned the Supreme Court of the State of California for a hearing to review the decision of the Court of Appeal. The Petition was denied by informal notice, July 10, 1974.

The trial court then entered Judgment in accordance with the opinion of the District Court of Appeal from which, for purposes of review, this Petition is filed.

Title 28 U.S.C. §1257 (3) states:

> "Final Judgment or Decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> '...by Writ of Certiorari,... where any title, right, privilege or immunity is especially set up or claimed under the constitution...'"

Bacon vs. Texas, 163 U.S. 207, 41 L.Ed. 132

> "A Judgment of an inferior court could be reviewed where a Writ of Error to the highest court of the state had been denied."

Mallinckrodt Chemical Works vs. Missouri, 230 U.S. 41, 59 L.Ed. 1192

> "The Supreme Court had jurisdiction where it appeared from the Opinion of the state court that the question of equal protection was treated as sufficiently raised and was especially dealt with and rendered against the appellant."

CONSTITUTIONAL PROVISIONS

The Constitutional provisions involved are:

FIRST AMENDMENT

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Code, Constitution Amendments, p. 4

FOURTEENTH AMENDMENT

"Nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Code, Constitution Amendments, p. 6.

The First Amendment is binding on the states through the Fourteenth Amendment. Presbyterian Church in the United States vs. Hull Memorial Church, 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601 (1969).

STATEMENT OF THE CASE

Plaintiff church, an affiliate local church of the defendant denomination, was

organized in 1912.

Without withdrawing from the defendant denomination, plaintiff filed an action for Declaratory Relief in the Superior Court of the State of California, seeking a determination as to the ownership of the local church property. After a trial, the trial court rendered Judgment that the property held by the plaintiffs is held upon a charitable trust for all members of the defendant denomination.

In the Opinion filed May 13, 1974, in the Court of Appeal of the State of California, the court in its discussion stated:

> "Several observations about this court's role in the dispute are appropriate. First, we are not bound by the trial court's interpretation of the documents since that interpretation did not rest upon conflicting extrinsic evidence. Estate of Dodge, 6 Cal.3d 311, 318; Parsons vs. Bristol Development Co., 62 Cal.2d 861, 865.
>
> Second, we are subject to the restraints of the First Amendment and hence may not decide doctrinal or ecclesiastical questions in the process of resolving the church property disputes. Presbyterian Church vs. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 21 L.Ed.2d 658, (89 S.Ct. 601); Watson vs. Jones, 80 U.S. 679 (S.C. 13 Wall.679)."

And continuing (2nd par. page 6, of the Opinion) the court said:

> "Where, as here, the property in dispute was transferred without express conditions to a local church which is associated with a larger hierarchical church organization, civil courts have options. They may adopt the Watson approach by enforcing the property decisions made by the highest ecclesiastical tribunal which has ruled on the issue (see e.g., Presbytery of Seattle, inc. vs. Rohbaugh [Wash.1971], 484 P.2d 615), or may instead apply 'neutral principles of law developed by use in all property disputes' (Presbyterian Ch. vs. Mary E.B. Hull Mem. Pres. Ch., supra, 393 U.S. 440, 21 L.Ed.2d 658 (89 S.Ct. 601); see also concurring opinion in Maryland & Virginia Elder of Ch. of God vs. Church of God (Sharpsburg), 396 U.S. 367 (90 S.Ct. 499). The latter approach in the Sharpsburg case (Maryland & Virginia Elder of Ch. of God vs. Church of God (Md.), 241 A.2d 691).
>
> In this case we choose not to follow the so-called Watson approach. Since the local church has neither withdrawn, split up, nor been dissolved, it is not necessary to rely

upon any ecclesiastical decision as to the church's legitimate successor in the community. (This case is thus distinguishable on its facts from the Watson line of cases.) Moreover, here it appears the General Assembly may not have made a valid determination of the trust beneficiary issue. Although in 1968, the General Assembly approved a committee report recommending continued adherence to the 'principle' that all property owned by local churches is held in trust for the general denomination, according to the Constitution the judicatories have no civil jurisdiction. Mr. Associate Justice Brennan, in his concurring opinion in the Sharpsburg case, supra, wrote:

'To permit civil courts to probe deeply into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine.' (Maryland & Virginia Elder of Ch. of God vs. Church of God [Sharpsburg], 396 U.S. 367, 369 [90 S.Ct. 499, 500-501]).

In this case 'neutral principles of law applicable to all property disputes' offer a better solution."

Under California Law the local church is classified as a charitable corporation. All assets received by such a charitable corporation are deemed to be impressed with a charitable trust by virtue of the corporation's expressed Declaration of Purposes, notwithstanding the absence of any expressed declaration by the donors of the assets. (Corp. Code 10206; Civil Code 852; Wheelock vs. First Presbyterian Church, 119 Cal. 477, 483; Pacific Home vs. County of Los Angeles, 41 Cal.2d 844, 852).

> "The question remains, which group is the beneficiary."

Plaintiffs rely on Corp. Code 10206(b) which states:

> "Any uncertainty as to the beneficiaries may be resolved by the corporation itself."

They argue they made their decision clear by filing this lawsuit. The statute obviously refers to uncertainty as to which individuals are to be beneficiaries of a charitable trust and should not be applied here as plaintiffs suggest.

Plaintiffs' Articles of Incorporation show only that the beneficiaries of the charitable trust must be Presbyterians. One purpose is stated to be:

> "...to establish and make suitable provision for the worship of Almighty God according to the doctrine, discipline, government, tenets and practice taught

> and authorized by the General Assembly of the Presbyterian Church of the United States of America;..."

Plaintiffs' By-Laws give the local Session "exclusive authority over the uses to which the church building may be put" and further state:

> "The Board of Trustees shall not sell, mortgage, purchase or dispose of real property belonging to the corporation unless duly authorized and directed to do so by a 2/3 vote of the qualified electors present at a duly called meeting of the congregation and corporation. Any proposed sale, mortgage, purchase or disposal of real property must also receive written approval of the Presbytery..."

The court stated in its opinion:

> "We interpret these documents as indicating an intent to create a trust for the benefit of that particular local Presbyterian congregation, subject only to supervision by the Presbytery and the other judicatories.
>
> Plaintiffs concede the local church is bound by the Constitution of the general denomination, and their local By-Laws so provide. However, no pro-

> vision in the Constitution requires the local churches to hold their property subject to an express trust for the general denomination."

"A proposal to add such a provision was defeated by the General Assembly in 1930. In 1934, the General Assembly added a provision to the Constitution which states in part:

> 'A particular church shall not sell, mortgage, or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the Presbytery...'

This provision is not determinative, for it can reasonably be interpreted as making the local churches' trustees subject to supervision and analogous to that of a co-trustee. In our view, the Constitution of the United Presbyterian Church indicates a reservation of power in the local churches entirely inconsistent with a trust for the benefit of the denomination as a whole. Paragraph 41.08 states in part:

> 'The church Session shall have authority over all of the affairs...of the particular church, except such matters as may, by this form of government, be specifically accorded to the pastor, to the congregation, or to a higher judicatory.'

Paragraph 35.03 adds:

> "These judicatories ought not to possess any civil jurisdiction....'

"The California case of Wheelock vs. First Presbyterian Church, supra, 119 Cal. 477, 483, supports the view the beneficiary of the trust is the local congregation. There the Presbytery ordered one large church divided into two smaller ones, and the court said, at pg. 484:

> 'The property was held in trust for a certain church congregation. That church has been legally divided into two branches. These branches are its legal successors, and the money should be apportioned according to the numerical strength of each.'

(See also Committee of Missions vs. Pacific Synod, 157 Cal. 105, 127)

The portion of the Judgment denying the Injunction is affirmed; the remainder is reversed with directions to enter Judgment declaring plaintiffs hold their property in trust for the members of the Brooklyn Heights Presbyterian Church of San Diego who are recognized by the General Assembly of the United Presbyterian Church in the United States of America as being in communion with the United Presbyterian Church in the United States of America."

On June 5, 1974, the court modified the Opinion and added the words in italics below:

> "The portion of the Judgment denying the Injunction is affirmed; the remainder is reversed with directions to enter Judgment declaring plaintiffs hold their property in trust for the members of the Brooklyn Heights Presbyterian Church in the United States of America as being in communion with the United Presbyterian Church in the United States of America, subject to the management and control of the Session of the Brooklyn Heights Church in accordance with its own governing documents and further subject to the limitations concerning the use and holding of local church property which are contained in the written Constitution of the United Presbyterian Church in the United States of America."

THE ISSUE RAISED HEREIN IS WHETHER THE OPINION AS MODIFIED VIOLATES THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION

The effect of the decision is to require civil court recognition that the owners of the property, declared by the court to be the owners, be in communion with the defendant national organization. The legal effect of that condition upon property ownership is to lend civil court authority to a limitation that is no different from the words "so long as", or

"as long as" the plaintiff remains in communion, etc. And if civil court authority by wording of the decree creates or places a limitation upon the property ownership, that amounts to enforcement of religion and interfers with the free exercise thereof by requiring the plaintiff to remain in communion with the defendant.

The italicized words in the Modified Opinion placed upon the property ownership of the plaintiffs a limitation by making that ownership subject to management and control and that that management and control be in accordance with the church's own governing documents and further subject to the limitations concerning the use and holding of local church property which are contained in the church Constitution.

The court recognized that by its own Constitution the church judicatories have no civil authority, but this limitation upon property ownership lends the authority of the civil court as a substitute for the lack of civil authority by the church court to enforce a limitation upon the use and exercise of ownership by the owner of the property. The result is necessarily a restriction upon the free exercise of religion, and necessarily has the effect of permitting "civil courts to probe deeply into the allocation of power within a church so as to decide where religious law places control over the use of church property". In so doing it violates the First Amendment in "much the same manner as civil determination of religious doctrine". Maryland & Virginia Elder of Church of God vs. Church of God

(Sharpsburg) 396 U.S. 367, 369 (90 S.Ct. 499,500-501).

This was not a case of a church split or withdrawal from the denomination and there has not been before the court a question of a division of the congregation or the recognition of any legitimate successor congregation to the plaintiff. Neutral principles of property law were applied but intermixed with the overstepping by the court into areas restricted by the First Amendment. The enforcement of these limitations upon the property ownership of the plaintiff has the natural effect of judicially establishing or enforcing religion or the free exercise thereof.

NATIONAL IMPORTANCE OF THE CASE

Within the State of California are many Presbyterian churches affected by the decision of the District Court of Appeal and by the refusal of the California Supreme Court to grant a hearing on the constitutional questions raised here. Much property and many people within the denomination who have rights in the property are affected by the present state of the court decision.

We respectfully pray that the Writ of Certiorari issue.

Respectfully submitted,

WILLIAM M. HILL

Attorney for Petitioner

APPENDICES

APPENDIX A

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR
THE COUNTY OF SAN DIEGO

BROOKLYN HEIGHTS PRESBYTERIAN CHURCH OF SAN DIEGO, an unincorporated ecclesiastical association, and BROOKLYN HEIGHTS PRESBYTERIAN CHURCH OF SAN DIEGO, INC., a California corporation,	
Plaintiffs,	Case Number 331277
vs.	JUDGMENT
THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, an unincorporated ecclesiastical association, and THE UNITED PRESBYTERIAN CHURCH IN THE U.S.A., INC., a Pennsylvania corporation, et al.,	
Defendants.	Filed March 5, 1973

The above entitled case came before this court, without a jury, for trial on November 1, 1972. A jury was not requested. Plaintiffs appeared by and through their attorney, WILLIAM M. HILL, and the defendants appeared by and through their attorneys, GRAY, CARY, AMES & FRYE by J. STERLING HUTCHESON and TIMOTHY W. TOWER. The court heard the testimony and examined the proofs offered by the parties, and the

cause was submitted for decision; the court being fully advised and having entered its Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the plaintiffs are not entitled to an injunction against the defendants.

2. That the real and personal propty held by the plaintiffs is held upon a charitable trust for all members of the UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA and is subject to the covenants, conditions and limitations contained in the governing documents and practices of the plaintiffs and the defendants, and is further held subject to the superior authority of the higher judicatories of the UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA to the extent their authority and power is exercised consistently with the written Constitution and practices of the UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA.

3. Defendants recover their costs and disbursements in the sum of _____

Dated: March 5, 1973

/s/ Verne O. Warner
JUDGE

APPENDIX B

IN THE COURT OF APPEAL,
FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

BROOKLYN HEIGHTS PRESBYTERIAN CHURCH OF SAN DIEGO, et al, Plaintiffs and Appellants, vs. THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, et al, Defendants and Respondents.	4 Civ. NO.12726 S.Ct. No.331277 Filed May 13, 1974

O P I N I O N

APPEAL from a judgment of the Superior Court of San Diego County. Verne O. Warner, Judge. Affirmed in part; reversed in part.

William M. Hill, for Plaintiffs and Appellants.

Gray, Cary, Ames & Frye, Sterling Hutcheson and Timothy W. Tower, for Defendants and Respondents.

This action for declaratory and injunctive relief grew out of a controversy concerning ownership of local property

standing in the name of the Brooklyn Heights Presbyterian Church of San Diego. The corporation and the unincorporated ecclesiastical association bearing that name have joined as plaintiffs (the local church). Primary defendant is the general denomination; the United Presbyterian Church in the United States of America, the successor to the Presbyterian Church in the United States of America. Plaintiffs appeal a judgment denying the injunction and adjudicating:

> "That the real and personal property held by the plaintiffs is held upon a charitable trust for all members of the UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA and is subject to the covenants, conditions and limitations contained in the governing documents and practices of the plaintiffs and the defendants, and is further held subject to the superior authority of the higher judicatories of the UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA to the extent their authority and power is exercised consistently with the written Constitution and practices of the UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA."

The United Presbyterian Church is an association of local Presbyterian churches governed by a hierarchy of tribunals called "judicatories" which are, in ascending order: The Session (composed of the pastor and the elders of the local church);

the Presbytery (composed of all the pastors and at least one elder from each of the churches within a district); the Synod (composed of representatives from all the Presbyteries within a larger geographical area); and the highest judicatory, the General Assembly (composed of delegations of pastors and elders from all the Presbyteries).

The general denomination's Constitution states:

> "These judicatories ought not to possess any civil jurisdiction, or to impose any civil penalties. Their power is wholly moral or spiritual, and that only ministerial and declarative..."

Plaintiffs have been an associative part of the general denomination since 1912 when the local church was organized by an officer of the California Synod. The new church soon acquired some lots at 30th and Fir Streets in San Diego, apparently as a gift from individual grantors. For several years the local church received some financial assistance from the national organization consisting of a $4,000 loan (later repaid), a $1,000 gift and $1,200 per year for the Pastor's salary. Since that time it appears the local church has been financially self-sufficient. Using funds donated by members of its own congregation, the local church has gradually acquired the property in dispute: real property covering approximately 3/4 of the block where the sanctuary is located, tangible personal property and

moneys on deposit. The deeds conveyed title to the plaintiff corporation without consitions or limitations.

The trial court held a trust for the benefit of a general denomination had been created in three ways: by implication from the circumstances under which gifts of personal property were made to the local church, by written documents signed by the trustees of the local church, and by operation of Corporations Code Section 10206.

The Judgment is based upon the following findings, which plaintiffs contend are unsupported by the evidence: the general denomination is organized in a descending order of authority; the local church is an integral part of the general denomination; the general denomination has contributed substantial material things to the organization and operation of the local church; plaintiffs have conducted themselves so as to recognize that they are an integral part of the general denomination and are subject, in the management, use and control of the property they hold, to the superior controls and limitations set forth in the Constitution of the general denomination and exercised through its judicatories; aside from contributions by ecclesiastical bodies of the general denomination, all property held by the local church was acquired through gifts of personal property by its members and others, and through later exchanges of that property for other property; the trustees and the Session of the local church accepted and acknowledged the charitable trust upon which they hold the property for the benefit of the gener-

al denomination; the General Assembly has made a determination, in accordance with its Constitution, that all property held by local churches is held in trust for the general denomination.

On appeal plaintiffs sometimes appear to argue their property is subject to no trust whatsoever, but they really contend they hold title subject to a trust for the sole benefit of their own congregation. Defendants contend plaintiffs' Articles of Incorporation and By-Laws and its own Constitution show the general denomination was intended to be the beneficiary but concede "the beneficiaries of the trust are not as clearly spelled out in the trust instruments as may be desirable..."

DISCUSSION

At the threshold several observations about this court's role in the dispute are appropriate. First, we are not bound by the trial court's interpretation of the documents since that interpretation did not rest upon conflicting extrinsic evidence. (Estate of Dodge, 6 Cal.3d. 311, 318; Parsons vs. Bristol Development Co., 62 Cal.2d. 861, 865.)

Second, we are subject to the restraints of the First Amendment and hence may not decide doctrinal or ecclesiastical questions in the process of resolving the church property dispute. (Presbyterian Ch. vs. Mary E.B. Hull Mem. Pres. Ch., 393 U.S. 440, 21 L.Ed.2d 658 [89 S.Ct.601]; Watson vs. Jones, 80 U.S. 679 [S.C. 13 Wall. 679].)

Where, as here, the property in dispute was transferred without express conditions to a local church which is associated with a larger hierarchical church organization, civil courts have options. They may adopt the Watson approach by enforcing the property decisions made by the highest ecclesiastical tribunal which has ruled on the issue (see e.g., Presbytery of Seattle, Inc. vs. Rohrbaugh (Wash. 1971), 485 P.2d. 615), or may instead apply "neutral principles of law developed by use in all property disputes" (Presbyterian Ch. v. Mary E. B. Hull Mem. Pres. Ch., supra, 393 U.S. 440, 21 L.Ed.2d 658 [89 S.Ct. 601]; see also concurring opinion in Maryland & Virginia Elder. of Ch. of God vs. Church of God [Sharpsburg], 396 U.S. 367 [90 S.Ct. 499].) The Maryland Supreme Court followed the latter approach in the Sharpsburg case (Maryland and Virginia Eldership vs. Church of God (Md.), 241 A.2d 691).

In this case we choose not to follow the so-called Watson approach. Since the local church has neither withdrawn, split up, nor been dissolved, it is not necessary to rely upon any ecclesiastical decision as to the local church's legitimate successor in the community. (This case is thus distinguishable on its facts from the Watson line of cases.) Moreover, here it appears the General Assembly may not have made a valid determination of the trust beneficiary issue. Although in 1968 the General Assembly approved a committee report recommending continued adherence to the "Principle" that all property owned by local churches is held in trust for the general denomination, according to the

Constitution the judicatories have no civil jurisdiction. Mr. Associate Justice Brennan, in his concurring opinion in the Sharpsburg case, supra, wrote:

> "To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine." (Maryland & Virginia Elder of Ch. of God vs. Church of God [Sharpsburg], 396 U.S. 367, 369 [90 S.Ct. 499, 500-501].)

In this case "neutral principles of law applicable to all property disputes" offer a better solution. Under California law the local church is classified as a charitable corporation. All assets received by such a charitable corporation are deemed to be impressed with a charitable trust by virtue of the corporation's express declaration of purposes, notwithstanding the absence of any express declaration by the donors of the assets. (Corp. Code §10206; Civ. Code §852; Wheelock v. First Presby. Church, 119 Cal. 477, 483; Pacific Home vs. County of Los Angeles, 41 Cal.2d 844, 852.)

The question remains, which group is the beneficiary. Plaintiffs rely on Corporations Code section 10206 (b) which states any uncertainty as to the beneficiaries may be resolved by the corporation itself. They argue they made their

decision clear by filing this lawsuit. The statute obviously refers to uncertainty as to which individuals are to be beneficiaries of a charitable trust and should not be applied here as plaintiffs suggest.

Plaintiffs' Articles of Incorporation show only that the beneficiaries of the charitable trust must be Presbyterians. One purpose is stated to be:

> "...to establish and make suitable provision for the worship of Almighty God according to the doctrine, discipline, government, tenets and practice taught and authorized by the General Assembly of the Presbyterian Church of the United States of America:..."

Plaintiffs' By-Laws give the local Session "exclusive authority over the uses to which the church building may be put" and further state:

> "The Board of Trustees shall not sell, mortgage, purchase or dispose of real property belonging to the Corporation unless duly authorized and directed to do so by a 2/3 vote of the qualified electors present at a duly called meeting of the Congregation and Corporation. Any proposed sale, mortgage, purchase or disposal of real property must also receive written approval of the Presbytery..."

We interpret these documents as indicating an intent to create a trust for the benefit of that particular local Presbyterian congregation, subject only to supervision by the Presbytery and other judicatories.

Plaintiffs concede the local church is bound by the Constitution of the general denomination, and their local bylaws so provide. However, no provision in the Constitution requires the local churches to hold their property subject to an express trust for the general denomination. A proposal to add such a provision was defeated by the General Assembly in 1930. In 1934 the General Assembly added a provision to the Constitution which states in part:

> "A particular church shall not sell, mortgage or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery ..."

This provision is not determinative for it can reasonably be interpreted as making the local church's trustees subject to supervision analogous to that of a co-trustee. In our view the Constitution of the United Presbyterian Church indicates a reservation of power in the local churches entirely inconsistent with a trust for the benefit of the denomination as a whole. Paragraph 41.08 states in part:

> "The church session shall have authority over all of the affairs...of the particular church, except such matters as may, by this Form of Government, be specifically accorded to the pastor, to the congregation, or to a higher judicatory."

Paragraph 35.03 adds: "These judicatories ought not to possess any civil jurisdiction,..."

The California case of Wheelock vs. First Presbyterian Church, supra, 119 Cal. 477, 483, supports the view the beneficiary of the trust is the local congregation. There the Presbytery ordered one large church divided into two smaller ones, and the court said, at page 484:

> "The property was held in trust for a certain church congregation. That church has been legally divided into two branches. These branches are its legal successors, and the money should be apportioned according to the numerical strength of each."

(See also Committee of Missions vs. Pacific Synod, 157 Cal. 105, 127.)

Defendants point to other provisions in the Constitution which authorize the Presbytery to dissolve the local church (¶42.107) and provide for the disposition of its real and personal property (¶62.11). In the light of the Constitu-

tional provisions already discussed, we interpret these powers as being exercisable only if the local church ceases to be in communion with the general denomination. The provisions shed no light on the trust beneficiary issue.

Plaintiffs are not entitled, however, to an injunction restraining defendants and their officers from exercising powers over the local property granted by the Constitution. The local church, by making itself an associative part of the larger organization, has impliedly agreed to being governed in this manner. (Watson vs. Jones, supra, 80 U.S. 679 [S.C. 13 Wall. 679].)

The portion of the Judgment denying the Injunction is affirmed; the remainder is reversed with directions to enter Judgment declaring plaintiffs hold their property in trust for the members of the Brooklyn Heights Presbyterian Church of San Diego who are recognized by the General Assembly of the United Presbyterian Church in the United States of America as being in communion with the United Presbyterian Church in the United States of America.

/s/ Brown
P.J.

WE CONCUR:

/s/ Whelan
J.

/s/ Cologne
J.

APPENDIX C

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

BROOKLYN HEIGHTS PRESBYTERIAN CHURCH OF SAN DIEGO, an unincorporated ecclesiastical association, et al,	
Plaintiffs,	NO. 331277
vs.	
THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, an unincorporated ecclesiastical association, et al,	MODIFIED JUDGMENT
Defendants.	Filed 8/27/74

The above entitled case came before this court, without a jury, for trial on November 1, 1972. A jury was not requested. Plaintiffs appeared by and through their attorney, WILLIAM M. HILL, and the defendants appeared by and through their attorneys, GRAY, CARY, AMES & FRYE by J. STERLING HUTCHESON and TIMOTHY W. TOWER. The court heard the testimony and examined the proofs offered by the parties, and the cause was submitted for decision. A Judgment was rendered by this Court on March 5, 1973, and was subsequently appealed. The Court of Appeal filed its Opinion on May 13, 1974 and subsequently filed a Modification of that Opinion on June 5, 1974.

Pursuant to the testimony and proof, the Findings of Fact and Conclusions of Law, and the Opinion filed by the Court of Appeal on May 13, 1974 together with the Modification of Opinion filed on June 5, 1974, the court hereby enters its Judgment as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the plaintiffs are not entitled to an injunction against the defendants.

2. That the real and personal property held by plaintiffs is held upon a charitable trust for all members of the BROOKLYN HEIGHTS PRESBYTERIAN CHURCH OF SAN DIEGO who are recognized by the General Assembly of the UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA as being in communion with the UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, subject to the management and control of the Session of the BROOKLYN HEIGHTS CHURCH in accordance with its own governing documents and further subject to the limitations concerning the use and holding of local church property which are contained in the written Constitution of the UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA.

3. Defendants recover their costs and disbursements for the trial of this case in the sum of $_____.

Dated: 8/27/74

/s/ Verne O. Warner
JUDGE

APPENDIX D

IN THE COURT OF APPEAL,
FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

BROOKLYN HEIGHTS PRESBYTERIAN CHURCH OF SAN DIEGO, et al Plaintiffs and Appellants, vs. THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, et al, Defendants and Respondents.	4 Civ. #12726 S. Ct. #331277 Filed 6/5/74

BY THE COURT

[Modification of Opinion.]

The Opinion filed May 13, 1974 is modified by substituting a comma for the last period of the Opinion, page 11, and adding:

> "Subject to the management and control of the Session of the Brooklyn Heights church in accordance with its own governing documents and further subject to the limitations concerning the use and holding of local church property which are contained in the written Constitution of the United Presbyterian Church in the United States of America."